

Paul Kozachenko, Esq., SBN: 104601  
Selena P. Ontiveros, Esq., SBN: 211790  
GONSALVES & KOZACHENKO  
1133 Auburn Street  
Fremont, CA 94538  
Telephone: (510) 770-3900  
Facsimile: (510) 657-9876

Attorneys for Defendant  
and Third Party Plaintiff  
Stark Investment Company

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PALMTREE ACQUISITION  
CORPORATION, a Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual, PERRY  
J. NEELY, an individual; GARY NEELY, an  
individual; MICHAEL R. NEELY, PERRY J.  
NEELY and GARY NEELY dba MIKE'S ONE  
HOUR CLEANERS; CHARLES FREDERICK  
HARTZ dba PAUL'S SPARKLE CLEANERS;  
CHARLES F. HARTZ, an individual;  
MULTIMATIC CORPORATION, a New  
Jersey corporation; WESTERN STATES  
DESIGN, a California corporation;  
MCCORDUCK PROPERTIES LIVERMORE,  
LLC, a Delaware limited liability company  
individually and as the successor to JOHN  
MCCORDUCK, KATHLEEN MCCORDUCK,  
PAMELA MCCORDUCK, SANDRA  
MCCORDUCK MARONA, and IMA  
FINANCIAL CORPORATION, a California  
corporation; STARK INVESTMENT  
COMPANY, a California general partnership;  
GRUBB & ELLIS REALTY INCOME  
TRUST, LIQUIDATING TRUST, a California  
trust; and DOES 1-20, inclusive,

Defendants.

Case No. 08-CV-3168-EMC

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT ; ORDER**

Hon. Edward M. Chen

Date: July 20, 2012

Time: 9:00 a.m.

Courtroom: 5, 17<sup>th</sup> floor

THE KIRRBURG CORPORATION, formerly known as MULTIMATIC CORPORATION, a New Jersey corporation; and STARK INVESTMENT COMPANY, L.P., a California limited partnership,

Third Party Plaintiffs,

v.

DOROTHY ANDERSON, Trustee of The Anderson Marital Trust, dated February 28, 1979, as amended and restated August 31, 1994; and DOROTHY ANDERSON, Trustee of The Anderson Tax Deferral Trust, dated February 28, 1979, as amended and restated August 31, 1994,

Third Party Defendants.

The parties who have appeared in the above-captioned environmental action have met and conferred and except for Western States Design, jointly submit the following Joint Case Management Conference Statement.

1. Date case was filed: This case was filed on July 1, 2008. The Second Amended Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was filed on August 24, 2011.

2. List or description of all parties: The parties to this case are as follows:

a. Plaintiff Palmtree Acquisition Corporation, former owner of the Livermore Arcade Shopping Center ("LASC"), one of two shopping centers comprising the subject property;

b. Defendant and Third Party Plaintiff Stark Investment Company, former owner of the LASC and Miller's Outpost Shopping Center ("MOSC"), the second shopping center comprising the subject property;

c. Defendant and Third Party Plaintiff The Kirrberg Corporation fka Multimatic Corporation, manufacturer of the dry cleaning machine at the LASC;

d. Defendants Michael R. Neely, Perry J. Neely and Gary Neely, individually and dba Mike's One Hour Cleaners, the dry cleaning operator at the LASC;

e. Defendant Charles Hartz, individually and dba Paul's Sparkle Cleaners, the dry cleaning operator at the MOSC;

1 f. Defendant Western States Design, distributor of the dry cleaning machine at the  
 2 LASC;  
 3 g. Defendant McCorduck Properties Livermore, LLC, current owner of the MOSC;  
 4 h. Defendants John McCorduck, Kathleen McCorduck, Pamela McCorduck and  
 5 Sandra McCorduck Marona are former owners of the MOSC;  
 6 i. Defendant IMA Financial Corporation, former owner of the MOSC; and  
 7 j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson Marital  
 8 Trust, dated February 28, 1979, as amended and restated August 31, 1994 and The Anderson Tax  
 9 Deferral Trust, dated February 28, 1979, as amended and restated August 31, 1994, current owners  
 10 of the LASC.

11 3. Summary of all claims, counter-claims, cross-claims, third party claims:

12 a. Plaintiff claims (1) contribution under CERCLA Sections 107(a) and (e)(2), 42  
 13 U.S.C. §§ 9607(a) and (e)(2), against all Defendants; (2) Declaratory Relief under CERCLA  
 14 against all Defendants; (3) Continuing Public Nuisance against all Defendants; (4) Negligence  
 15 against Defendants Neelys, Multimatic and Western States Design; (5) Equitable Indemnity against  
 16 all Defendants; and (6) Declaratory Relief under state law against all Defendants.

17 b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a) and (e)(2),  
 18 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3) Equitable Indemnity;  
 19 and (4) Declaratory Relief under state law against all Third Party Defendants.

20 4. Brief description of the event underlying the action: This action is a “re-opener” of a  
 21 prior action that was conditionally settled. The prior action was filed on February 3, 1993 in the  
 22 United States District Court for the Northern District of California and entitled *Grubb & Ellis*  
 23 *Realty Income Trust, Liquidating Trust v. Catellus Development Corp., et al.*, and related cross-  
 24 actions, Case No. C93-0383 SBA (“Prior Action”). The Prior Action concerned the alleged release  
 25 of dry cleaning solvent perchloroethylene (“PCE”) from the dry cleaning establishments at the  
 26 LASC and MOSC in Livermore, California. The California Regional Water Quality Control Board  
 27 (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning  
 28 operators and property owners to remediate the soil and groundwater impacted by PCE

1 contamination from the centers. Following settlement of the Prior Action, certain parties  
2 requested, and the RWQCB granted, the establishment of a Containment Zone with a Contingency  
3 Plan and the RWQCB issued a new order in 1996 to that effect. However, on March 17, 2008 and  
4 March 21, 2008, the RWQCB issued Directives requiring further investigation and monitoring of  
5 the PCE contamination, which also potentially impacted the deeper aquifer, thereby allegedly  
6 triggering the “re-opener” provision in the settlement agreement. Plaintiff Palmtree Acquisition  
7 Corporation thereafter filed this action on July 1, 2008, seeking contribution under CERCLA and  
8 damages pursuant to the “re-opener” provision, among other claims.

9       5.     Description of relief sought and damages claimed with an explanation as to how  
10 damages are computed: The parties seek both declaratory and monetary relief through the Second  
11 Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims and  
12 counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,  
13 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution  
14 of the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of  
15 future investigative costs and remedial measures (to be determined) under CERCLA. The parties  
16 also seek monetary damages for nuisance and negligence.

17       6.     Status of discovery (including any limits or cutoff dates): Since September 2008,  
18 discovery has been stayed, including initial disclosures, so that the parties could engage in  
19 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along  
20 with other potentially responsible parties, and are continuing to do so, while simultaneously  
21 working cooperatively as a group to respond to the RWQCB’s directives and requirements.  
22 Indeed, Plaintiff and Defendants, with the exception of Grubb & Ellis Realty Income Trust,  
23 Liquidating Trust, have thus far spent over \$1,000,000 since March 2008 in their response efforts,  
24 including jointly hiring a project manager and technical consultant; directing investigative  
25 measures and submitting a final technical investigative report; submitting a work plan, directing  
26 work thereunder and submitting a remedial investigation report with technical findings and  
27 proposed remedial alternatives; and coordinating among the various regulatory agencies. The  
28 RWQCB has reviewed the remedial investigation report and the responding parties have hired a

contractor to prepare and submit the remedial action plan. Negotiations are under way between the responding parties and contractor for the implementation of the remedial action plan. The parties are very close to finalizing a settlement among them and are hopeful that a settlement can be finalized during the third quarter of this year. The parties would like to continue working cooperatively towards resolution of this matter and thus propose that the discovery stay be continued.

7. Procedural history of the case including previous motions decided and/or submitted, ADR proceedings or settlement conferences scheduled or concluded, appellate proceedings pending or concluded, and any previous referral to a magistrate judge: As described above, the parties have been mediating among themselves before Timothy Gallagher, Esq. This case was initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April 2, 2010 and then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case consist of:

a. Application for good faith settlement determination by Plaintiff Palmtree Acquisition Corporation and Defendant Northrop Grumman Systems Corporation, granted October 4, 2010.

b. Motion to dismiss the First Amended Third Party Complaint by Third Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos Trust, granted without prejudice on October 4, 2010.

c. Motion to dismiss the Second Amended Third Party by Third Party Defendant Melinda Ellis Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos Trust, granted with prejudice on February 11, 2011.

d. Motion to dismiss one cause of action from the Third Amended Third Party Complaint, or in the alternative, for a more definite statement by Third Party Defendant Dorothy Anderson, granted without prejudice on August 4, 2011.

e. Motion to dismiss the Fourth Amended Third Party Complaint by Third Party Defendant Dorothy Anderson, denied on October 24, 2011.

///

8. Other deadlines in place (before reassignment), including those for dispositive motions, pretrial conferences, and trials: None.

9. Any requested modification of these dates and reason for the request: None.

10. Whether the parties will consent to a magistrate judge for trial: The parties to this Joint Case Management Conference Statement do not consent to a magistrate judge for trial.

11. Whether Judge Chen has previously conducted a settlement conference in this case, and if so, whether the parties stipulate to him handling this case for trial pursuant to ADR Local Rule 7-2 or request his recusal: Judge Chen has not previously conducted a settlement conference in this case.

12. If there exists an immediate need for a case management conference to be scheduled in the action: The parties believe that substantial progress has been made and is still being made to amicably resolve this matter through mediation. The parties hope to finalize the settlement by the third quarter of this year and the parties will apply to the Court for a good faith settlement determination.

There is no immediate need for a case management conference to be scheduled. The parties propose the scheduling of a further case management conference in six months, in December 2012, so that they may continue with mediation efforts and finalize a settlement.

DATED: July 13, 2012

GONSALVES & KOZACHENKO

By: /s/ Selena P. Ontiveros  
Selena P. Ontiveros

Attorneys for Defendant & Third Party  
Plaintiff Stark Investment Company, a  
California limited partnership

DATED: July 13, 2012

The Costa Law Firm

By: /s/ Daniel P. Costa  
Daniel P. Costa

Attorneys for Defendant & Third Party  
Plaintiff Stark Investment Company, a  
California limited partnership

1 DATED: July 13, 2012

Cox, Castle & Nicholson, LLP

2 By: /s/ Stuart I. Block  
3 Stuart I. Block

4 Attorneys for Plaintiff Palmtree Acquisition  
5 Corporation, a Delaware corporation f/k/a  
6 Catellus Development Corporation

7 DATED: July 13, 2012

BASSI, EDLIN, HUIE & BLUM LLP

8 By: /s/ Noel Edlin  
9 Noel Edlin

10 Attorneys for Defendants Michael R. Neely,  
11 Perry J. Neely, and Gary Neely, dba Mike's  
One Hour Cleaners

12 DATED: July 13, 2012

Dongell Lawrence Finney, LLP

13 By: /s/ Thomas A. Vandenberg  
14 Thomas A. Vandenberg

15 Attorneys for Defendant & Third Party  
16 Plaintiff The Kirrberg Corporation f/k/a  
17 Multimatic Corporation

18 DATED: July 13, 2012

Rogers Joseph O'Donnell

19 By: /s/ D. Kevin Shipp  
20 D. Kevin Shipp

21 Attorneys for Defendant Charles Frederick  
Hartz, dba Paul's Sparkle Cleaners

22 DATED: July 13, 2012

23 Gordon, Watrous, Ryan, Langley, Bruno &  
Paltenghi

24 By: /s/ Bruce C. Paltenghi  
25 Bruce C. Paltenghi

26 Attorneys for Defendant McCorduck  
27 Properties Livermore, LLC, a Delaware  
limited liability company; John McCorduck;  
Kathleen McCorduck; Pamela McCorduck;  
28 and Sandra McCorduck Marona

1 DATED: July 13, 2012

Castellon & Funderburk LLP

2 By: /s/ Ruben A. Castellon  
3 Ruben A. Castellon

4 Attorneys for Defendant McCorduck  
5 Properties Livermore, LLC, a Delaware  
limited liability company

6 DATED: July 13, 2012

Stanzler Law Group

7 By: /s/ Jordan S. Stanzler  
8 Jordan S. Stanzler

9 Attorneys for Defendant IMA Financial  
10 Corporation, a California corporation

11 DATED: July 13, 2012

Paladin Law Group LLP

12 By: /s/ Brian R. Paget  
13 Brian R. Paget

14 Attorneys for Third Party Defendant Dorothy  
15 Anderson, Trustee of the Anderson Marital  
16 Trust and The Anderson Tax Deferral Trust

17  
18 IT IS SO ORDERED that the CMC is reset from 7/20/12 to 12/14/12 at 9:00 a.m. A joint  
19 CMC Statement shall be filed by 12/7/12.

20  
21 Edward M. Chen  
22 U.S. District Judge

